

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**  
ROBERT BARTLETT, ET AL., : 19-cv-00007 (CBA) (TAM)  
: :  
Plaintiffs, : :  
: :  
- versus - : U.S. Courthouse  
: Brooklyn, New York  
SOCIETE GENERALE DE BANQUE :  
AU LIBAN SAL, ET AL., :  
: :  
: October 8, 2021  
Defendants : 4:40 p.m.  
-----X

TRANSCRIPT OF CIVIL CAUSE FOR TELEPHONE  
STATUS CONFERENCE  
BEFORE THE HONORABLE TARYN A. MERKL  
UNITED STATES MAGISTRATE JUDGE

**A P P E A R A N C E S:**  
**(VIA VIDEO/AUDIO)**

**For the Plaintiffs:** **Gary M. Osen, Esq.**  
**Ari Ugar, Esq.**  
**Dina Gielchinsky, Esq.**  
**Michael J. Radine, Esq.**  
Osen LLC  
190 Moore Street, Suite 272  
Hackensack, NJ 07601

**For the Defendants:** **Linda C. Goldstein, Esq.**  
**Michael H. McGinley, Esq.**  
**Tamar Mallat, Esq.**  
Dechert LLP  
1095 Avenue of the Americas  
New York, NY 10036

(Appearances continue on next page)

**Transcription Service:** **Transcriptions Plus II, Inc.**  
61 Beatrice Avenue  
West Islip, New York 11795  
RL.Transcriptions2@gmail.com

Proceedings recorded by electronic sound-recording,  
transcript produced by transcription service

APPEARANCES CONTINUED:

**For the Defendants:**

**Gassan A. Baloul, Esq.**  
**Joseph S. Alonzo, Esq.**  
**Mitchell R. Berger, Esq.**  
Squire Patton Boggs (US) LLP  
1211 Avenue of the Americas  
New York, NY 10036

**Robert W. Hamburg, Esq.**  
Mayer Brown LLP  
1221 Avenue of the Americas  
New York, NY 10020

**Elizabeth Price Foley, Esq.**  
Baker & Hostetler LLP  
1050 Connecticut Ave., N.W.  
Suite 1100  
Washington, DC 20036

**Alex C. Lakatos, Esq.**  
Mayer Brown LLP  
1999 K Street N.W.  
Washington, DC 20037

**George E. Anhang, Esq.**  
Shearman & Sterling  
410 9th Street, NW, Suite 800  
Washington, DC 20004

Proceedings

1           THE COURT: Good afternoon. Ms. Chan, could  
2 you please call the case?

3           THE CLERK: This is Civil Cause for a Status  
4 Conference, Docket 19-cv-7, *Bartlett et al. v. Societe*  
5 *Generale de Banque au Liban SAL, et al.*

6           Before asking the parties to state their  
7 appearance, I would like to note the following. Persons  
8 granted remote access to proceedings are reminded of the  
9 general prohibition against photographing, recording, and  
10 re-broadcasting of court proceedings. Violation of these  
11 prohibitions may result in sanctions including removal of  
12 court-issued media credentials, restricted entry to  
13 future hearings, denial of entry to future hearings, or  
14 any other sanctions deemed necessary by the Court.

15           MR. OSEN: Good afternoon, your Honor. This is  
16 Gary Osen from Osen LLC for the plaintiff. I'm joined by  
17 my colleagues Ari Ugar, Michael Radine, and Dina  
18 Gielchinsky.

19           THE COURT: Good afternoon to you all. And  
20 just to keep things orderly, I know we have a number of  
21 parties on the line, so if you could try to identify  
22 yourself and let me know who you're here on behalf of for  
23 the defendants, I would appreciate it.

24           I note at the outset that we may be missing  
25 counsel for Societe Generale and another one of the

Proceedings

1 banks, Lebanon Bank. So if anybody is also representing  
2 those parties for purposes of today or has discussed this  
3 with their counsel for those entities, I'd like to know  
4 that too.

5 So take it away starting I guess with  
6 Fransabank if we don't have Societe Generale on the line.

7 MS. GOLDSTEIN: Yes, your Honor. This is Linda  
8 Goldstein of Dechert. I am counsel to both Fransabank  
9 and BLOM Bank. I'm joined on the line by my colleagues  
10 Michael McGinley and Tamar Mallat.

11 And I have spoken with counsel from DLA and am  
12 authorized to speak on their client's behalf as well.

13 THE COURT: Thank you for that. I appreciate  
14 it.

15 MR. BERGER: Good afternoon, your Honor, this  
16 is Mitchell Berger from Squire Patton Boggs along with my  
17 colleagues Gassan Baloul and Joe Alonzo. We represent  
18 MEAB Bank, Lebanon and Gulf Bank, and Fenicia Bank.

19 THE COURT: Thank you. Who else do we have?

20 MR. HAMBURG: Good afternoon, your Honor. This  
21 is Robert Hamburg of Mayer Brown representing Banque  
22 Libano-Francaise.

23 THE COURT: Good afternoon.

24 MR. LAKATOS: Good afternoon, your Honor. This  
25 is Alex Lakatos of Mayer Brown representing Bank Audi

Proceedings

1 SAL.

2 THE COURT: I'm sorry, what was your last name,  
3 sir?

4 MR. LAKATOS: Oh, sure. It's Lakatos. It's  
5 L-A-K-A-T-O-S.

6 THE COURT: Okay. Thank you.

7 MR. LAKATOS: Sure. Thank you, your Honor.

8 MR. ANHANG: Good afternoon, your Honor. This  
9 is George Anhang with Sherman & Sterling, and we  
10 represent Bank of Beirut SAL.

11 THE COURT: Good afternoon.

12 MS. FOLEY: Good afternoon, your Honor. This  
13 is Elizabeth Foley. I'm here representing Jammal Trust  
14 Bank and the Lebanese Central Bank Liquidator, Dr.  
15 Muhammed Baasiri, and I'm with Baker Hostetler.

16 THE COURT: Thank you. Who else do we have? I  
17 know we have more parties on the line. Anybody else?  
18 All right. Is that everybody?

19 Okay. So we're here today because it sounds as  
20 though the parties are unable to determine how to  
21 interpret Judge Amon's list of the discovery stay in this  
22 case pending additional motion practice. So I'd like to  
23 hear from plaintiffs about the type of discovery that  
24 they are seeking to begin in this case, and then I'd like  
25 to hear from the defendants about why it is their view

## Proceedings

1 that that type of discovery should not be permitted and,  
2 you know, may be too burdensome at this stage of the case  
3 given the pending motions.

4 I know that Jammal Trust Bank, Ma. Foley's  
5 client, may be differently situated than some of the  
6 others, but if people are able to consolidate their  
7 arguments, I don't know if you guys have discussed a lead  
8 defense counsel arrangement at all, I would certainly be  
9 grateful to hear from anybody who would like to take the  
10 lead on certain arguments but will not preclude any party  
11 from contributing if they have something they would like  
12 to add.

13 So if you could start, Mr. Osen, with an  
14 overview of what you would like to accomplish with regard  
15 to discovery and where things stand in that regard, I  
16 would appreciate it. Thank you.

17 MR. OSEN: Sure. Thank you, your Honor.

18 So there are sort of essentially two requests  
19 pending before the Court.

20 The first is our motion to compel the  
21 defendants to participate in a Rule 26(f) conference  
22 which as your Honor knows is sort of the general starting  
23 point for discovery without which most discovery cannot  
24 go forward except as directed by court order. And so  
25 that's sort of the first step, and I'll come back in a

## Proceedings

1 moment to the reasons why we think that's appropriate.

2           The second element of discovery sort of in lieu  
3 of the first if we can't proceed in the ordinary course  
4 with a Rule 26(f) conference is to proceed with what  
5 would be initially limited third party discovery here in  
6 New York of the correspondent banks who have  
7 transactional records here in the United States that are  
8 relevant to the litigation.

9           And so those are the two sort of broad  
10 categories. And I'm happy to go through our  
11 understanding sort of background of how we got to this  
12 point.

13           THE COURT: That would be welcome. Thank you.

14           MR. OSEN: Okay. So we brought our case  
15 originally in January of 2019. We amended the complaint  
16 in August of that year. And of course the defendants  
17 moved to dismiss the complaint thereafter. We had oral  
18 argument on August 31st of 2020 and the next day Jammal  
19 Trust Bank filed a pre-motion letter seeking substitution  
20 and intervention by Mr. Baasiri in essentially a new  
21 motion to dismiss.

22           The Court then on November 25th of last year  
23 issued a memorandum and order in which she denied the  
24 defendants' motion to dismiss as to our second and third  
25 claims for relief which are essentially for shorthand

## Proceedings

1 purposes the JASTA claims under Section 2333(d).

2 And then subsequent to that, the defendants  
3 moved for an interrogatory appeal which was denied. And  
4 as part of that denial, the Court issued an order in  
5 December, actually December 30th of last year, in which  
6 the Court issued a stay of most discovery in the case  
7 until the issuance of an opinion by the Second Circuit in  
8 *Reuvane v. Lebanese Canadian Bank*, also more commonly  
9 referenced as *Kaplan v. Lebanese Canadian Bank*.

10 And the one major exception I guess to the stay  
11 was that the Court did permit plaintiff to issue  
12 preservation subpoenas to New York and U.S. correspondent  
13 banks. And that's it. I'm sorry, your Honor, was there  
14 questions?

15 THE COURT: Not from me. I'm on mute. I don't  
16 know if anybody else may.

17 MR. OSEN: Okay. Sorry, your Honor.

18 So that stay, except for the preservation  
19 subpoenas, was in place until the Second Circuit decision  
20 in *Kaplan*. And once that occurred, the defendants, as  
21 they were directed to in the December 30th order, asked  
22 for a continuance of the stay. And in a June 25, 2021  
23 order, the Court denied the application for a further  
24 stay and then directed the defendants to let the Court  
25 know whether they wanted to answer the complaint or move



## Proceedings

1 to dismiss.

2           The defendants, as your Honor knows, then moved  
3 to dismiss the case again notwithstanding the fact that  
4 *Kaplan*, which they had relied upon in their motions to  
5 dismiss, as they saw it as the controlling legal  
6 standard, was in fact vacated by the Circuit in its  
7 decision this summer.

8           So they proceeded with their motion to dismiss.  
9 The Court denied the stay. And then we contacted defense  
10 counsel and sought the scheduling of the Rule 26(f)  
11 conference which they declined to participate in. And  
12 then we filed in July, July 22nd, a motion to compel the  
13 defendant to comply with Rule 26(f) and participate.

14           And subsequent to that of course, the briefing  
15 was completed on September 9th of the motion to dismiss,  
16 and then we moved in September, 20th, for third party  
17 discovery essentially in the alternative to Rule 26(f)  
18 proceedings.

19           THE COURT: Thank you very much for that  
20 overview and that procedural history. It's very helpful.

21           So as you know, we are newer to the case. The  
22 case was reassigned to us at some point over the summer.  
23 And at that juncture, it wasn't clear to me what role  
24 Judge Amon was planning to play with regard to pretrial  
25 supervision because we noted that she had already denied

## Proceedings

1 the application to stay discovery and we thought  
2 discovery would likely proceed. It's now been clarified  
3 that our usual arrangement in the eastern district is  
4 going to be applicable in this case and we will be  
5 managing the pretrial discovery and pretrial case  
6 management in the matter.

7 So I'd like to hear from whoever is taking the  
8 lead from the defendants as to why Judge Amon lift of the  
9 stay doesn't mean what it says it means, lifting of the  
10 stay, and also why the defendants cannot participate in a  
11 Rule 26(f) conference and object to this third party  
12 discovery at a minimum.

13 MS. GOLDSTEIN: Yes, your Honor. Linda  
14 Goldstein, and I will start to address those issues.

15 The first point is that the stay that was  
16 requested after the *Kaplan* case was decided was a stay  
17 pending the Second Circuit's decision in another JASTA  
18 case that was then pending, the *Honickman* case. And the  
19 stay that Judge Amon denied was a stay pending Second  
20 Circuit's decision in the *Honickman* case. And after that  
21 particular stay was denied, the Court did grant our  
22 request to file a motion to dismiss the second amended  
23 complaint that had been filed by the plaintiff. And the  
24 Court set a rather expeditious briefing schedule and also  
25 very streamlined briefs so that our briefs were ten pages

## Proceedings

1 long and our replies were five pages long.

2 And then two days later after we filed a motion  
3 to dismiss, the Second Circuit issued its decision in the  
4 *Honickman* case. And in *Honickman*, unlike in *Kaplan*, the  
5 Court of Appeals affirmed the dismissal of an aiding and  
6 abetting claim under JASTA against one of the defendants  
7 in this case, BLOM Bank, and further articulated the  
8 elements of pleading an aiding and abetting claim under  
9 JASTA.

10 We then amended our motion to dismiss to deal  
11 with the new issues raised in the Second Circuit's  
12 *Honickman* decision, and the briefing on the motion to  
13 dismiss was completed on September 9, almost a month ago.  
14 And that briefing raises several critical arguments that  
15 could dramatically affect the scope of discovery first  
16 with respect to the conspiracy claim, one of the two  
17 remaining claims.

18 Judge Amon's November 2020 decision did not in  
19 fact address the substance of the conspiracy claim. The  
20 Court held that it did not have to address that given its  
21 ruling on the aiding and abetting claim.

22 The *Kaplan* decision in fact, the logic of the  
23 *Kaplan* decision, makes it quite clear that the conspiracy  
24 claim pleaded in the *Bartlett* case does not state a cause  
25 of action. And certainly, if the conspiracy claim were

## Proceedings

1 dismissed, that would have a material impact on the scope  
2 of any discovery to be taken from the defendant banks.

3           The other issues raised in the motion to  
4 dismiss all pertain to the aiding and abetting claim.  
5 And to give a very short form overview of the allegations  
6 in this case, as it currently stands, there are claims  
7 against 13 banks arising from the provision of banking  
8 services to over 200 different customers in Lebanon.  
9 Judge Amon's decision, which denied the motion to dismiss  
10 with respect to the aiding and abetting claim, although  
11 it did grant the motion on the primary liability claim,  
12 rested in large part on the fact that the complaint  
13 alleges that the defendant banks provided services to a  
14 number of customers, and a very small number of  
15 customers, 19 all together, that had been designated as  
16 specially designated global terrorists by the U.S.  
17 Treasury Department.

18           And what is clear from both the *Kaplan* decision  
19 and the *Honickman* decision is that the timing of that  
20 designation, or those designations, vis-à-vis the  
21 provision of banking services, is a crucial point. And  
22 we have argued in the pending motion to dismiss that the  
23 complaint as it stands does not adequately plead that any  
24 of the moving defendants, who are the 11 defendants that  
25 submitted the motion, does not allege that any of those

## Proceedings

1 banks provided services to any of those 19 customers  
2 after the customer was designated as an SDGT and did not  
3 contain other allegations that would suffice to meet the  
4 general awareness element of a JASTA aiding and abetting  
5 claim.

6           So that is crucial because if, as we have  
7 submitted to Judge Amon, those allegations, the lack of  
8 timing is fatal, that would call for the dismissal of the  
9 claims against at least ten of the current defendants.

10           Another issue that was raised in the motion to  
11 dismiss arising from the *Kaplan* and the *Honickman* cases  
12 is whether the complaint adequately pleads that any of  
13 the 200 or more customers was closely intertwined with  
14 the terrorist activities of Hezbollah. And Judge Amon's  
15 decision from November of 2020 already held that there  
16 was really only a very small number of the customers that  
17 had been alleged to be connected at all to Hezbollah's  
18 terrorist activities. Those were the Islamic Resistance  
19 Support Organization, the IRSO, Martyr's Foundation, and  
20 the Imam Khomeini Relief Committee, the IKRC.

21           So if none of the other customers were closely  
22 intertwined with Hezbollah, then that would call for the  
23 dismissal of at least six of the -- I'm sorry, at least  
24 five of the moving defendants which would also  
25 significantly narrow the case.

## Proceedings

1           And then if that were to happen, the claims  
2 against any of the remaining defendants would not involve  
3 discovery of the accounts of 200 customers, it would  
4 involve discovery only of the accounts of the handful of  
5 customers that were closely intertwined.

6           So for all of those reasons, the resolution of  
7 the motion, it doesn't dispose of the case entirely which  
8 we think is a very real possibility. There is a  
9 likelihood that it will narrow the case significantly.  
10 And the reason that this is particularly important in  
11 this case, because certainly as in most cases defendants  
12 would argue that the scope of discovery would change, in  
13 this case we have the added complication of the Bank  
14 Secrecy Act in Lebanon. And so any discovery against the  
15 defendant banks of information regarding customer  
16 accounts is going to have to go through a commodity  
17 analysis to determine the proper scope of that discovery.  
18 And so that is why we believe that the better course  
19 would certainly be to continue staying discovery against  
20 the defendant banks.

21           As for the third party discovery, we believe  
22 that the proper balance was struck when plaintiffs  
23 sought, and we consented, to the service of preservation  
24 subpoenas upon a number of correspondent banks. And  
25 should plaintiffs wish to further protect their interest

## Proceedings

1 by serving additional preservation subpoenas, we'd  
2 certainly have no objection to that. But based on what  
3 we've seen, there's no reason to think that the banks  
4 that have been served with preservation subpoenas are not  
5 honoring their obligations to preserve whatever documents  
6 they had in their possession and certainly nothing that's  
7 been presented to the Court thus far suggests that they  
8 are disregarding the subpoenas. So we think that the  
9 plaintiff's interests are adequately protected by that.

10 THE COURT: So I'd like to go back to one  
11 argument that you made regarding the timing issue, and  
12 your argument that the deficiencies in the pleadings as  
13 to timing could be fatal with regard to the provisional  
14 banking services to people who -- you know, depending on  
15 when they were designated.

16 MS. GOLDSTEIN: Yes.

17 THE COURT: Wouldn't their banking records be  
18 helpful or probative as to determination of when the  
19 banking services were provided?

20 MS. GOLDSTEIN: There's a threshold issue in  
21 terms of pleading of whether they have properly alleged  
22 knowledge. And plaintiffs have copious records. Mr.  
23 Osen's firm has been litigating similar cases against  
24 various entities for many years and has, in his  
25 complaint, provided copious details of transactions.

## Proceedings

1 None of them show the provision of services to an FDGT  
2 after the designation, and telling me in response to our  
3 motion, plaintiff's counsel did not say that discovery  
4 would help to identify such evidence and did not say that  
5 were misreading the complaint somehow. But in fact he  
6 conceded that there was no allegation in the complain  
7 that there were such transactions.

8 THE COURT: Okay. Thank you. Are there any  
9 other defendants who would like to be heard on this first  
10 question, the threshold question, that I just posed to  
11 Ms. Goldstein? All right.

12 MS. FOLEY: Your Honor, this is Elizabeth  
13 Foley.

14 THE COURT: Okay, Ms. Foley.

15 MS. FOLEY: Yes, hi. Thank you.

16 I would just like to point out that JTB's  
17 position, as you noted initially, is quite different from  
18 the other defendants. So I can be brief because this  
19 will pertain I assume to a lot of the other questions  
20 that your Honor may be having.

21 Our position of course is that as you know,  
22 we're parties to an interlocutory appeal as of right  
23 under the Collateral Order Doctrine. And we cited  
24 numerous cases in our letter motions showing that the  
25 lower courts are pretty uniform on the fact that when you



## Proceedings

1 take an interlocutory appeal on an immunity issue under  
2 the Collateral Order Doctrine, the district court is the  
3 divested of jurisdiction on all further proceedings as to  
4 the appealing party.

5 So that is our position here both with regard  
6 to the 26(f) conference as well as the third party  
7 subpoenas.

8 THE COURT: Okay. Thank you for that. I  
9 certainly understand that you are somewhat differently  
10 situated than the other defendants.

11 Is there anybody else who'd like to be heard on  
12 the arguments that Ms. Goldstein just made in response to  
13 my questions as to the defendants' arguments as to why  
14 they should not be required to participate in discovery  
15 and/or why the third party subpoenas are a problem?

16 All right. So I think it's back to you, Mr.  
17 Osen. Would you like to be heard in response to Ms.  
18 Goldstein?

19 MR. OSEN: Sure, your Honor. Thank you very  
20 much.

21 So I'm going to set for the moment JTB to one  
22 side since they're a somewhat unique situation and just  
23 start with the procedural stuff and then I'm happy to  
24 address very briefly some of the substantive points as  
25 well.

## Proceedings

1           So to begin with, I just want to clarify  
2 because Ms. Goldstein referred to continuing the stay in  
3 this case. There is in fact no stay in place at the  
4 moment. And I think that's procedurally significant  
5 because the Court's June 25th order denied a further stay  
6 and the defendant has never sought an affirmative stay  
7 thereafter. They simply pocket vetoed the proper  
8 procedure under Rule 26(f) by not cooperating and  
9 participating in the conference. And it is pretty much  
10 black letter law that where there is no stay in place,  
11 under Rule 1, the discovery proceedings are supposed to  
12 go forward unless there is an explicit stay. And I think  
13 we cited a case from the EDNY, *City of New York v.*  
14 *Beretta* on that very subject. So there is no stay and  
15 they have not sought any stay except in the argument you  
16 just heard now.

17           Moreover, and this gets to the substantive  
18 arguments that you heard, first of all, the Court set the  
19 briefing schedule in the same order that it denied the  
20 stay. So it allowed the defendants to respond as to  
21 whether they wanted to move to amend and when they said  
22 they did, that was granted on July 6th. So you know,  
23 they didn't come back to the Court after *Honickman* was  
24 issued at the end of July and say now we want to renew a  
25 request for a stay of discovery. They just simply failed

## Proceedings

1 to comply with Rule 26(f).

2 Now that being said, just very briefly to  
3 address Ms. Goldstein's various points, and I'm going to  
4 really try to be brief, your Honor.

5 First of all, neither *Kaplan* nor *Honickman*  
6 address conspiracy. They're both aiding and abetting  
7 cases. So that's sort of just a non-starter.

8 Number two, as a practical matter, as anyone  
9 who's looked at the case law on aiding and abetting and  
10 conspiracy, they're essentially kissing cousins and it's  
11 hard to articulate a basis on which discovery of one  
12 would be different from the other.

13 Ms. Goldstein refers to the fact that they had  
14 a quote small number of specially designated global  
15 terrorist customers of which only 19 are identified in  
16 the complaint during the relevant period. There are  
17 literally dozens more after the relevant period, that is  
18 who were designated afterward, but who weren't during the  
19 years in question.

20 Moreover, I think most people would agree that  
21 19 designated terrorist customers is 19 too many both  
22 practically and legally speaking.

23 But more importantly, in *Kaplan*, none of the  
24 customers were designated during the relevant period.  
25 They were only designated afterwards. And the Court

## Proceedings

1 nonetheless found that the dismissal was not warranted  
2 because designations are one, potential data points for  
3 general awareness, but that doesn't mean that because  
4 someone is not designated, people don't know who they are  
5 or that it's impossible to know that they are in fact  
6 terrorists. And that's true, by the way, your Honor, as  
7 you can well imagine of literally thousands of terrorists  
8 around the world. Not all of them are designated,  
9 otherwise the Treasury Department would have to add  
10 another couple of wings to the building. Instead,  
11 designation is one way in which knowledge is obtained by  
12 initial institutions. Another one, for example, is when  
13 the customer as we allege offload plane loads of cash and  
14 deposits that into a bank account. And in fact, *Kaplan*  
15 gives another example of that with Nazem Ahmad a person  
16 who the United Nations identified in a report in 2002 as  
17 a Hezbollah connected money launderer and blood diamond  
18 trafficker. He wasn't designated by the United States  
19 until 2020, but that doesn't mean he wasn't a known  
20 Hezbollah operative in 2002 or 2005 or 2010.

21           Moreover, this idea that only a small number of  
22 these customers are quote/unquote closely intertwined  
23 with Hezbollah is patently contradicted in every respect  
24 by pages and pages of the second amended complaint. We  
25 allege that Hezbollah, and we do feel based on U.S.

## Proceedings

1 Government findings, that Hezbollah operates something  
2 called the Business Affairs Component which is basically  
3 their commercial wing for fund raising. And not just for  
4 Hezbollah, but for Hezbollah's Islamic jihad  
5 organization, the part of Hezbollah that commits every  
6 single attack that they are responsible for.

7 And so when Ms. Goldstein refers to 200  
8 customers and only a couple of them are intertwined with  
9 Hezbollah, setting aside the ones that the judge  
10 specifically identified in her November 2020 decision,  
11 and those include the Islamic Resistance Support  
12 Organization, whose sole and dedicated purpose is funding  
13 Hezbollah's terrorism, or the Martyr Foundation which was  
14 the subject of the *Kaplan* appeal and which is dedicated  
15 to supporting the quote/unquote martyrs of Hezbollah.

16 Setting all that to the side, and multiple  
17 defendants have these entities as customers, if you put  
18 that all to the side, the commercial enterprises and the  
19 hundreds of customers we've identified are all part of  
20 the business affairs component of Hezbollah, i.e., they  
21 raise and launder money through these defendant banks for  
22 the Islamic jihad organization of Hezbollah. There is  
23 nothing more closely intertwined with Hezbollah or its  
24 violent activities than its Islamic jihad organization.

25 And so in our view, Ms. Goldstein

## Proceedings

1 mischaracterizes the district court's opinion by  
2 suggesting that it somehow clairvoyantly adopted a  
3 closely intertwined standard that didn't exist or was not  
4 articulated in those words in *Kaplan* before that decision  
5 was issued this summer.

6 But the Court mentions and discusses our  
7 allegations about the Business Affairs Component. It  
8 cites examples of the Martyrs Foundation and IRSO as  
9 egregious examples of entities that are clearly involved  
10 with Hezbollah openly affiliated with them, but in no way  
11 suggests that the other 200 entities and customers are  
12 somehow innocent or irrelevant to the allegations.

13 And finally, Ms. Goldstein references Lebanese  
14 Bank secrecy and that's a perfect example of why  
15 discovery should proceed and a Rule 26(f) conference  
16 should be ordered because this is a marathon and not a  
17 sprint. The process just of doing all the things we have  
18 to do in the ordinary course, negotiating a protective  
19 order, talking about electronic discovery protocol, Rule  
20 26 disclosures, all that takes time. It's not something  
21 that's done overnight. And all of that leads to a  
22 process after which the defendants are going to refuse to  
23 produce documents that are requested in Rule 26 discovery  
24 on the grounds that they can't produce records from  
25 Lebanon. And that whole process which we have been

## Proceedings

1 through on at least five occasions takes anywhere from  
2 two years to a decade to resolve. And the sooner we get  
3 started on the process and the sooner we get records that  
4 are actually available to us that don't require years of  
5 litigation to get to, the better off we are, our clients  
6 are, and the interest of justice.

7 THE COURT: Ms. Goldstein, would you like to  
8 respond to Mr. Osen's arguments?

9 MS. GOLDSTEIN: Yes, absolutely. If I could  
10 just go in order.

11 First, with respect to conspiracy, what the  
12 *Kaplan* case made clear is that it was interpreting the  
13 statutory language of JASTA and there are portions of the  
14 statute that apply both to conspiracy and to aiding and  
15 abetting. And it is clear from the *Kaplan* decision that  
16 a claim for conspiracy stands only when the defendant is  
17 alleged to have conspired with the principle violator.  
18 In this particular case, the principle violator is not  
19 Hezbollah but the Iraqi militias which placed or launched  
20 the bombs that entered the plaintiffs. So *Kaplan* is  
21 quite material to that.

22 And the dismissal of the conspiracy case would  
23 certainly have an impact on the scope of discovery  
24 because I assume that the plaintiffs would be seeking  
25 communications that would be communications, for example,

## Proceedings

1 among the banks that would not be pertinent to an aiding  
2 and abetting claim but would be pertinent to a conspiracy  
3 claim.

4           Second, in terms of the FDGT designations, we  
5 started with that because Judge Amon's decision made it  
6 clear that she considered those to be the strongest  
7 allegations and that those allegations were I guess  
8 pertinent only to the extent that she inferred or felt it  
9 was permissible to infer that the banks provided services  
10 to those customers after they had been designated as  
11 FDGTs. And our argument based on the *Honickman* case is  
12 that that is not a permissible inference. And to the  
13 extent that the decision or Mr. Osen in his opposition  
14 raised additional indicia of general awareness, we have  
15 provided answers to those as well, and that's now pending  
16 before Judge Amon.

17           What is clear, you know, however, is that if we  
18 are right that the inference that services were provided  
19 after the designation was not a proper inference to make,  
20 then five of the defendants -- I'm sorry, then ten of the  
21 defendants should be out of the case.

22           As for the closely intertwined argument, we  
23 believe that characterization of the various customers is  
24 squarely based on Judge Amon's decision. And what can't,  
25 although we might disagree with Mr. Osen on that, what we



## Proceedings

1 cannot dispute is that there is a very material  
2 difference between discovery involving three or let's say  
3 a handful of customers and discovery involving over 200  
4 customers. Those are obviously very different  
5 enterprises and scope.

6 And as for Lebanese bank secrecy, we agree that  
7 it is a complex process and a sensitive process, and it  
8 is our view that that process is best embarked upon when  
9 we have the Court's final decision as to the scope of the  
10 case so that when requests made are to the appropriate  
11 authorities in Lebanon regarding disclosure, that those  
12 are the actual requests that are needed for the case,  
13 that they're not broader or excessive based on  
14 allegations that are subsequently dismissed from the  
15 case.

16 THE COURT: So I may agree with you that  
17 getting the records pursuant to the Lebanon Bank Secrecy  
18 Act, you know, is a stage that should perhaps be done at  
19 a time when it's more crystal clear of what claims remain  
20 in the case. But what do you make of Mr. Rosen's  
21 arguments that even getting to that point will take some  
22 time and that the burden rests on the defendants if they  
23 seek a stay of discovery. Particularly given the age of  
24 this case, it seems to me that discovery is sort of  
25 overdue for getting started which I understand to be part

## Proceedings

1 of Judge Amon's determination not to continue the stay  
2 when she issued her first opinion in the case. Why can't  
3 discovery start? Why can't get their third party  
4 subpoenas at a minimum?

5 MS. GOLDSTEIN: Well, I suppose the point that  
6 the third parties also have an interest if there are only  
7 going to be a few banks at issue rather than 13 banks and  
8 if there are only going to be a few customers at issue  
9 rather more than 200 customers not producing documents  
10 that are ultimately not part of the case. And that's not  
11 a matter of irrelevance to the defendant banks because  
12 although I haven't seen all of the contracts between the  
13 defendant banks and their correspondence, it's quite  
14 typical in those cases to have indemnification clauses.  
15 So those are expenses that would be passed through to the  
16 defendant banks.

17 THE COURT: Mr. Osen, do you have a sense of  
18 the scope of the production that you would be requesting  
19 vis-à-vis these third party subpoenas?

20 MR. OSEN: Sure, your Honor. Certainly  
21 initially we're focused on this stage on transactional  
22 records that involve identified Hezbollah operatives or  
23 entities listed in the complaint. Obviously, we don't  
24 want to waive anything down the road if we get that far  
25 three years from now to follow up with other third party

## Proceedings

1 discovery either to other banks, or other entities, or  
2 what have you. But for what we're talking or  
3 contemplating at the moment, we're talking about  
4 transactional records. These are all electronic records.  
5 The banks routinely search for them but with name  
6 searches. And it's actually easier for them to do it  
7 broadly than it is narrowly in our experience.

8           So you know, to just use an example, if we were  
9 to take the Martyrs Foundation and assuming they had  
10 responsive transactions, they generally produce, you  
11 know, whatever they have that has some variation on that  
12 name, and it's easier for them to just do that than to  
13 try and spend manpower narrowing it, making sure that we  
14 have the precise party, et cetera. So in the past we've  
15 gotten anything that has a variation on that spelling or  
16 what have you will be produced and then obviously it's  
17 under a protective order so we only ultimately can  
18 utilize the materials that are relevant.

19           But each bank is different. Each bank, some of  
20 these will do it in house, some hire outside counsel to  
21 deal with it. We often have to negotiate with each one  
22 of them individually on their burden, how far back their  
23 records go, et cetera. So that itself is a not  
24 insignificant process but one which, you know, takes time  
25 and they're pretty individualized because some are just

## Proceedings

1 more responsive historically. Others drag their feet  
2 more and you know, that how it goes.

3 But in one sense Ms. Goldstein is correct. We  
4 would seek discovery as to every Hezbollah related entity  
5 that we've identified. And we can't imagine a universe  
6 in which Hezbollah related entities, most of which are  
7 either designated or related to designated entities, are  
8 not relevant to the claims we've made.

9 THE COURT: How many banks?

10 MR. OSEN: That I don't know. There are I  
11 think roughly eight to ten that potentially have -- that  
12 we think might have potentially responsive information,  
13 but it might be fewer than that. But generally there are  
14 a couple of major clearing banks that do most of this  
15 activity.

16 THE COURT: And would I be correct, sir, that  
17 in seeking this -- I don't even want to call it  
18 permission because as you point out there is no current  
19 stay of discovery and ordinarily parties do not require  
20 permission to seek subpoenas physically from a third  
21 party. So I don't even want to call it permission. But  
22 this discussion we are having about your idea to subpoena  
23 these bank records, I presume you are not asking me today  
24 to rule in advance on any motions to quash that the  
25 defendants could choose to make at a later date if there

Proceedings

1 was a specific objection or specific issue with regard to  
2 a particular subpoena?

3 MR. OSEN: Well, I don't know if it would be so  
4 much for the defendants, although there may be  
5 circumstances where they might as well, but usually it's  
6 the bank that receives the subpoena that would come in --

7 THE COURT: Oh, I've received motions to quash  
8 from parties too for third party subpoenas. So anybody  
9 can try.

10 MR. OSEN: Okay. Anyone can try. That is  
11 true, your Honor.

12 The reason we framed it at as permission is  
13 that the sort of normal process under Rule 26 is for us  
14 to have a 26(f) conference, do all of that as a  
15 preliminary before engaging in any discovery, even  
16 document discovery requests, let alone third party  
17 discovery. So we have framed it in that way because the  
18 sort of ordinary process of just sitting on a conference  
19 call and working through things like language for the  
20 protective order hasn't occurred here.

21 THE COURT: Fair enough. And thank you for  
22 that.

23 So Ms. Goldstein, I have a feeling you know  
24 what my thinking basically is on this. And as I'm sure  
25 you are well versed, the filing of a dispositive motion,

## Proceedings

1 even one that suggests the district court doesn't have  
2 jurisdiction, does not automatically warrant an issuance  
3 of a stay under Rule 26. And given the age of this case,  
4 you know, I have concerns about the fact that discovery  
5 has not even begun. It sounds complex. As the parties  
6 may be aware, I myself have substantial experience  
7 working through bank record subpoenas and things of that  
8 nature from my litigating days and I hear Mr. Osen in  
9 terms of the length of time that these things take.

10 I also hear the defendants said that it's  
11 burdensome. And I have gotten many a phone call from the  
12 banks over the years saying do you really need every one  
13 of these accounts? Do you really need this guy? Do you  
14 really need this? We can only go this far back. So I  
15 hear, you know, what Mr. Osen is saying. I also hear  
16 about the potential burden that this poses on the  
17 defendant correspondent banks, the possibility that they  
18 may seek recompense or indemnification from the  
19 defendants named in this case.

20 But in the determination of whether a stay of  
21 discovery is appropriate, I have to look at the various  
22 factors under the law including whether you made a strong  
23 showing that the plaintiff's claim is not meritorious,  
24 the breadth of discovery, and the burden of responding to  
25 it, and the risk of unfair prejudice to the plaintiff.

## Proceedings

1 And I think you have made a very strong argument that  
2 there may be aspects of this case that don't survive  
3 after the motion to dismiss. But exactly what the  
4 contours of the case at this stage would look like, we  
5 can't know. And so although I do give that first factor,  
6 whether you've made a strong showing that the plaintiffs'  
7 claims are not meritorious with some weight, I do not  
8 think that the breadth of discovery that the plaintiff is  
9 seeking at this juncture is so burdensome that it creates  
10 an undue burden for the defendants in the ordinary  
11 practice that discovery is to commence and to be self-  
12 executing.

13 And as to the third factor, I have concerns  
14 about unfair prejudice to the plaintiff. As we have  
15 already made note of, this is a lengthy process to get  
16 these records. The case has already been pending for a  
17 couple of years and I think that, you know, it's time to  
18 get cracking on the discovery process so that the parties  
19 could have a better sense of where the case is going.

20 So with all respect for the fact that there are  
21 motions pending and that the parties have concerns about  
22 commencing a discovery, I do want the parties to sit down  
23 and have a meet and confer and discuss what discovery  
24 would look like and what you could agree on and what you  
25 can't agree on. And if you truly cannot agree on scope

## Proceedings

1 of discovery and everything else, I'm not saying you have  
2 to turn over everything immediately, that's what the  
3 initial Rule 26(f) conference is for, is for the parties  
4 to sit and discuss and meet and confer. I want that  
5 conference to happen. And I can give the parties my  
6 normal case management worksheet, but it will be of no  
7 use to you guys given the complexity of the case. It  
8 works very well for smaller cases but I think it won't be  
9 very helpful to you and your experienced teams in this  
10 case.

11 So I welcome a proposal from the parties about  
12 what discovery should look like, how it could be phased,  
13 and what the timing of that discovery would look like.

14 And I also think that the plaintiffs, you know,  
15 should be permitted to start their process with regard to  
16 getting bank subpoenas. Those records, you know, from  
17 the banks' perspective, yes, it can be burdensome to  
18 produce than, but it's not crazy burdensome. They have  
19 computers, they have subpoena compliance departments,  
20 they have entire groups of his banks dedicated for this  
21 specific purpose and it is important information that the  
22 plaintiffs need to work through their case.

23 Of course, the scope of discovery could change  
24 as soon as Judge Amon rules on the motion to dismiss.  
25 And I frankly suspect that given the complexities here



## Proceedings

1 that the parties won't be very far along in the discovery  
2 process when her opinion is issued.

3 So for that additional reason, I just don't  
4 think that the defendants have met their burden to show  
5 that a stay of discovery continues to be appropriate in  
6 this case.

7 I will note that the JTB defendants are  
8 differently situated and will excuse them from  
9 participating in discovery for the time being. And Ms.  
10 Foley, do you have any sense from the Circuit about  
11 whether your case is being set for oral argument? The  
12 briefing schedule, what the timing looks like?

13 MS. FOLEY: Thank you, your Honor. Our initial  
14 opening brief is due on October 27th, so we're still  
15 about three weeks away from that, and then the usual time  
16 lines for their reply, the opposition reply. So we're  
17 just beginning the process in terms of formal papers  
18 toward the end of this month.

19 THE COURT: I see. Okay. So I do think that  
20 that issue may be premature to require your client to  
21 participate in this Rule 26(f) conference. But given Ms.  
22 Goldstein's very, very thorough and excellent  
23 presentation here today, I think all of the banks'  
24 interests will be protected if there's a Rule 26(f)  
25 conference in terms of not over-committing too quickly to

## Proceedings

1 any particular production and that Ms. Goldstein and your  
2 co-counsel on the case, although not representing your  
3 client but counsel and the defense side, will represent  
4 all defendants' interests in terms of trying to come up  
5 with a reasonable plan here.

6 So Ms. Goldstein, I understand this is  
7 complicated and I understand it's going to take the  
8 parties some time. Do you have thoughts on when we  
9 should have another status conference to check in on the  
10 parties as to how things are proceeding?

11 MS. GOLDSTEIN: I would suggest 60 days.

12 THE COURT: Mr. Osen, how does that sound to  
13 you?

14 MR. OSEN: I think it depends obviously on when  
15 we do our initial Rule 26(f) conference. I would think  
16 we know probably a little sooner, maybe in 45 days,  
17 whether we have a meaningful impasse. We could always  
18 join the request pushing out if we need more time, but I  
19 would prefer to set it a little earlier.

20 THE COURT: Well, that's a great question. You  
21 know, I know that this is scheduling -- even the  
22 scheduling in this case is going to be complex in terms  
23 of a meet and confer and having a Rule 26(f) conference.

24 So Ms. Goldstein, do you have an estimate of  
25 when you think might be a realistic time frame before

Proceedings

1 which the parties could have that initial discussion and  
2 styled as a Rule 26(f) conference?

3 MS. GOLDSTEIN: Well, as you probably could  
4 tell from the roster of the people attending this call,  
5 which is a subset of the people who need to be involved  
6 in the conference, because we don't have most of the  
7 junior lawyers who are charged with the marshaling of  
8 resources for discovery, (indiscernible).

9 THE COURT: Ms. Goldstein, I missed part of  
10 what you said.

11 MS. GOLDSTEIN: Oh, I'm sorry. I just said  
12 that I thought it would take at least 30 days before we  
13 could align everybody's calendars to have a conference.

14 THE COURT: Okay. Yes, my phone kind of cut in  
15 and out there. I don't know if it's on my end or on your  
16 end. But given the breadth of the number of people  
17 involved alone, I think that expecting the parties to be  
18 able to find a mutually agreeable time within 30 days is  
19 not unreasonable. And as a consequence, Mr. Rosen, I am  
20 going to request that the parties either provide a status  
21 report or we have a status conference at the 60 day mark.  
22 Given the complexity of getting everybody freed up for a  
23 status conference, do you have a strong view, Mr. Osen,  
24 as to whether or not a 60 day out status report or 60 day  
25 out status conference would be preferable?

## Proceedings

1 MR. OSEN: I think we should have a conference.  
2 In my experience, your Honor, nothing focuses the mind of  
3 counsel like having to answer to the Court. And so I  
4 would prefer a status conference.

5 I'd also add if it's amenable to the Court,  
6 we'd like to at least begin the process of third party  
7 discovery essentially as soon as we effectively can.

8 THE COURT: Yes. I thought I had made clear, I  
9 thought that the third party subpoenas need to begin and  
10 I note that those are without prejudice to any party to  
11 make an appropriate motion in response to the specific  
12 service and specific process that you ultimately seek to  
13 issue. I'm not inviting discovery disputes, but I just  
14 want to make clear that this is -- I'm not giving you the  
15 blessing to do whatever you want. Obviously, everyone's  
16 rights are preserved if there is an issue with the  
17 subsequent process that you seek to serve on those banks.  
18 So yes, the third party subpoenas are certainly free to  
19 be issued when you're able to get that rolling. I do  
20 think the 30 days out for Rule 26(f) conference target  
21 date for the parties would be great.

22 And Ms. Chan, do we have a date we could offer  
23 to the parties in mid-December for a follow-up status  
24 conference?

25 THE CLERK: Sure, Judge. Just give me one

Proceedings

1 second to take a look. How is --

2 MS. GOLDSTEIN: Your Honor --

3 THE CLERK: -- December 13th at 10:15?

4 THE COURT: I'm sorry? Okay. I don't know who  
5 just spoke but everyone write down December 13th at  
6 10:15. And who just spoke?

7 MS. GOLDSTEIN: This is Linda Goldstein. I  
8 just wanted to raise the point on third party discovery,  
9 whether that was a two-way street and the defendants  
10 could also serve third party subpoenas.

11 THE COURT: Absolutely.

12 MS. FOLEY: Your Honor, if I may? This is  
13 Elizabeth Foley.

14 THE COURT: Yes.

15 MS. FOLEY: Yes. I heard that you excused us  
16 from the 26(f) conference, but just a point of  
17 clarification, this also I assume excludes us from  
18 discovery as to third parties or other discovery pending  
19 disposition of the Second Circuit appeal?

20 THE COURT: I don't know how you would be able  
21 to given the third party discovery process, but if that  
22 arises, you can let me know.

23 MS. FOLEY: Meaning that if a third party  
24 discovery is attempted with regard to someone who has  
25 records or information regarding JTB that we would then

## Proceedings

1 object at that time even though we should be divested --

2 THE COURT: I mean it's not clear to me that  
3 you're immune from discovery, from other parties getting  
4 discovery about you. That's not clear to me on the  
5 current record or the current cases that have been cited  
6 in support of your argument as to why you yourself should  
7 not be participating in discovery. But I don't think  
8 that you get also a security blanket in a bubble if other  
9 banks have information about you.

10 MS. FOLEY: Well, I would like to speak on that  
11 if possible, your Honor. I would like to be heard. We  
12 did actually cite a case from DBC on this specific issue  
13 which held that in fact the bubble, as you referred to  
14 it, the immunity, in order to protect the purpose of the  
15 immunity, divestiture is complete and that includes  
16 discovery as to third parties. And the rationale of that  
17 is that -- I guess think of it this way, if you were  
18 claiming an immunity as a judge, some sort of absolute  
19 judicial immunity, the district court had denied that,  
20 and then the plaintiff wanted to proceed against you by  
21 seeking third party discovery, maybe depositions of  
22 coworkers or documents from the hands of your bank, or  
23 something like that, that kind of discovery against third  
24 parties is intrusive and the point of the divestiture and  
25 the immunity itself is to make sure that the defendant

## Proceedings

1 who claims the immunity enjoys the robustness of it and  
2 the immunity from suit including all the burdens  
3 attendant to it.

4           So I do think that there are instances in which  
5 discovery against third parties would undermine the  
6 entire purpose of the immunity.

7           THE COURT: I hear you on that, and that's one  
8 of the reasons that I suggested that you would let me  
9 know if you think that some sort of process or attempt to  
10 obtain information does in fact invade the sort of bubble  
11 that you're afforded because I frankly don't know exactly  
12 what the plaintiff's subpoenas will look like. And I  
13 appreciate the analogies close to home, but you know,  
14 it's just sort of abstract. You know, I just am not at  
15 all certain what fact pattern would develop that would  
16 result in concern that was properly grounded on the case  
17 law that you cited.

18           And you know, for example, if the plaintiff's  
19 subpoena was squarely like to a correspondent bank, like  
20 any and all transactions involving this bank, that could  
21 be -- you could then be in a position of saying this is  
22 too far, this is appropriate for a motion to quash. And  
23 I get that you feel that you should not have to  
24 participate in litigation at all because of the sovereign  
25 immunity argument. But I'm not going to prejudge a fact

## Proceedings

1 pattern that's not before me. I just can't do that.

2           So you know, I caution Mr. Osen to understand  
3 that you have an interlocutory appeal pending that  
4 provides sovereign immunity protection potentially and  
5 that it would be best if he doesn't create litigation  
6 issues with regard to that. But until there's a specific  
7 fact pattern touching upon the sovereign immunity issue  
8 that may attend to your client, I just don't think we can  
9 say definitively that there's no discovery that could  
10 touch upon your client. That just doesn't -- it's just  
11 premature. We don't have the facts relevant to make that  
12 finding.

13           MS. FOLEY: Okay. Thank you, your Honor.  
14 We'll keep that in mind and should the plaintiff seek  
15 discovery that does burden JTB, then we would make the  
16 appropriate motion to quash. Thank you.

17           THE COURT: Yes. And I do hear you. And I  
18 hope, Mr. Osen, that you're hearing me. Okay? Are you  
19 hearing me, sir?

20           MR. OSEN: I certainly hear your Honor. I  
21 think it's safe to say the plaintiffs are looking for the  
22 path of least resistance to get discovery where we can.  
23 And I would also add that the likelihood of getting  
24 discovery from JTB as a designated global terrorist is in  
25 general pretty low. So we certainly hear what your



Proceedings

1 Honor's saying.

2 THE COURT: Thank you. All right. So with  
3 that, we have the target date of the parties  
4 participating in a Rule 26(f) conference within the next  
5 30 days which puts us out to November 8th I guess. Or  
6 November 7th if you want to be really technical about it.  
7 Let me look at the days of the week. November 7th is a  
8 Sunday. So I'd like to ask the parties to participate in  
9 the Rule 26(f) conference by December 8th. And we will  
10 have another status conference in the case December 13th  
11 at 10:15 a.m. Does that time work for you, Mr. Osen?

12 MR. OSEN: Yes, your Honor, that's fine.

13 THE COURT: Does that time work for you, Ms.  
14 Goldstein?

15 MS. GOLDSTEIN: It does.

16 THE COURT: Is there anyone on the call who  
17 cannot appear or have a designee appear on that date,  
18 December 13th, at 10:15? Please speak up and identify  
19 yourself if you are in that situation. All right. So it  
20 looks like we have a date and a time, and a little bit of  
21 a plan forward.

22 I do caution you, Mr. Osen, to be mindful of  
23 the various complexities here and, you know, if  
24 necessary, tread lightly, and as you say, take the path  
25 of least resistance, choose your battles. All of those

## Proceedings

1 things, all of those cheesy analogies. I do want to help  
2 get this discovery started but I am going to be very  
3 mindful about the burden on the defendants given the  
4 posture and the possibility of success on their motion to  
5 dismiss at least in part. So I want to do this in a  
6 staged way and I'm happy to hear the parties' proposal as  
7 to how they can do that in a way that seems fair and  
8 reasonable but does start the process of moving the  
9 discovery along.

10 And with that, Mr. Osen, is there anything  
11 further that we should attempt to take up today?

12 MR. OSEN: Not for the plaintiffs, your Honor.  
13 Thank you.

14 THE COURT: Ms. Goldstein, starting with you on  
15 behalf of the defendants?

16 MS. GOLDSTEIN: Nothing further to raise, your  
17 Honor. Thank you.

18 THE COURT: Thank you. Is there any other  
19 defendant who would like to add any final comments,  
20 remarks, thoughts, questions? And if so, please identify  
21 yourself and who you represent.

22 All right. So it sounds like we have a little  
23 bit of a plan forward and it's nice to meet you all.  
24 Thank you both for your excellent presentations and  
25 arguments. I feel that I've learned a lot about the

Proceedings

1 procedural history, that it just feels more granular  
2 hearing it in argument than just simply reviewing it from  
3 the docket and reading Judge Amon's prior opinions. So I  
4 appreciate your time and efforts today and I look forward  
5 to speaking with you all again in December. Take care.

6 MULTIPLE SPEAKERS: Thank you, your Honor.

7 (Matter concluded)

8 -oOo-

C E R T I F I C A T E

I, MARY GRECO, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 14th day of October, 2021.

  
\_\_\_\_\_  
Transcriptions Plus II, Inc.